

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

.....

Original Application No. 996 of 1993.

this the 28th day of March 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)
HON'BLE MAJ. GEN. K.K. SRIVASTAVA, MEMBER (A)

Indra Kumar Nigam, S/o Sri Ram Shanker Nigam, R/o 149
Vinayakpur, Kanpur Nagar.

Applicant.

By Advocate : Sri M.K. Upadhyay.

Versus.

Union of India through Ministry of Defence, New Delhi.

2. Director General of Quality Assurance (Stores),
Department of Defence Production, New Delhi.

3. Chairman of Departmental Committee, IIIrd level,
Kirkee, Pune, Maharashtra.

4. The Controller, Control rate of Quality Assurance
(General Store), Post Box No. 127, Kanpur.

5. Sri N. Ramchandran, SQAE, (Aruvankadu).

Respondents.

By Advocate : Sri Ashok Mohiley.

ORDER

RAFIQ UDDIN, MEMBER (J)

The applicant, who is working as Lower Division Clerk (L.D.C. in short) in the office of Controller, control rate of Quality Assurance (General Stores), Kanpur, (respondent no. 4), has filed this O.A. for redressal of his two grievances namely (i) the applicant be promoted as Upper Division Clerk (U.D.C. in short) with effect from the date of his junior namely N. Ramachandran (respondent no. 5) was promoted, & (ii) the seniority list prepared on the basis of his transfer date to the office of the respondent no.4 i.e. 14.12.1973 be modified and the seniority of the applicant should be treated from the date of his initial appointment i.e. 1.8.1969.

Dm

2. The brief facts of the case are that the applicant was initially appointed on 1.8.1969 and was posted in lieu of Independent Armed Bale HQ C/O 056 APO Babina Cantt. Thereafter he was transferred station Health Organisation pachmadhi, M.P. Thereafter he was again transferred from pachmadhi to Controllerate of Inspection (General Store), Kanpur on 14.12.1973, on compassionate grounds. ^R ~~As~~ As a result of centralisation of DPC-III on D.G.O.A. organisation basis w.e.f. 4.9.1985 a combined seniority roll was prepared and circulated by the Chairman of Departmental Committee-III (respondent no.3), where in the interse seniority of the applicant was fixed on the basis of the seniority assigned to him by the respondent no. 4 w.e.f. 4.12.1973.

3. The claim of the applicant is that in the seniority list, mentioned above, the applicant is placed at serial number 38, whereas, the respondent no.5 is placed at serial number 39, as such the applicant is senior to the respondent no.5. However, the applicant's name has been deliberately discarded from the panel of promotion list in arbitrary manner with malafide intention. There is no adverse remarks against the applicant in his service record, therefore, he is entitled to be promoted as U.D.C. w.e.f. the date his immediate junior was promoted.

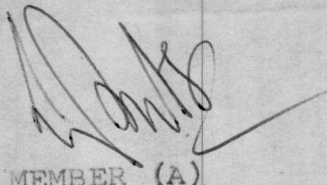
4. We have heard the learned counsel for the parties at length and have perused the pleadings on record.

5. It is not disputed by the learned counsel for the applicant that a combined seniority list, ^R ~~which~~ ^{in the year 1985} and circulated ^R ~~by~~ ^{in which} by the respondent no.3 ~~in which~~ inter-se seniority of the applicant was fixed on the basis of the seniority assigned to him by the respondent no.4 from 4.12.1973. The applicant admittedly did not challenge that seniority list in the year 1985 and as such the claim of the applicant for modification of the aforesaid seniority list by means of this O.A., which has been filed in the year ^R

1993, is obviously barred by time and the same cannot be considered at this belated stage. As regards the claim of the applicant for promotion to the post of U.D.C. from the date of promotion of the respondent no.5, we find merit in his claim. It has clearly been admitted by the respondents in their counter reply (para 14) that there is no adverse remarks in the service record of the applicant at the time when the D.P.C. was held for promotion of the applicant alongwith the respondent no.5. It is also not in dispute that the post of U.D.C. is a non-selection post. In other words, the promotion can be made on the basis of the seniority-cum-fitness. It is, however, contended by the learned counsel for the respondents that ~~the~~ ^{by} the D.P.C. did not find the performance of the applicant as meritorious to that extent, which would award him the promotion as U.D.C. as per the guiding principle of the said Rules. It is further stated that the method for selection for the post of U.D.C. is as per the seniority-cum-fitness basis with the confidential records of the individual. Since, the applicant is admittedly senior to the respondent no.5 and there is no adverse remarks in the service record of the applicant for the purposes of the relevant selection to the post of U.D.C., we do not find any justification to deny the claim of the applicant for his promotion by using the term " the DPC has assessed that his overall performance was not found upto the expectation of desired level" as per the averments made in para 2.1.4 of the ~~the~~ Supplementary Counter reply of the respondents. It is not made clear as to what does the term of "expectation of the desired level" indicates. We do not find any force in the argument of the learned counsel for the respondents that the applicant has been rightly denied ~~for~~ promotion to the post of U.D.C. by the D.P.C. It is again pointed-out at the cost of repetition that no adverse remarks were recorded in the service record of the applicant and he is senior

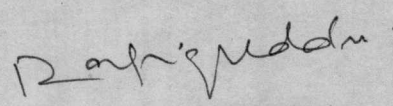
to the respondent no.5. It is a clear case of discrimination and the applicant has been denied the benefit of promotion to the post of U.D.C. in arbitrary and un-reasonable manner.

6. We, therefore, allow this O.A. in part. The claim of the applicant for modification in the seniority list w.e.f. the date of his initial appointment i.e. 1.8.1969 is rejected: The claim of the applicant for promotion to the post of U.D.C. w.e.f. the date when his immediate junior namely the respondent no.5 was promoted, is allowed. The respondents are, however, directed to promote the applicant w.e.f. the date when his immediate junior (respondent no.5) was promoted, with all consequential benefits. This exercise will be carried-out by the respondents within a period of 3 months from the date of communication of this order. No costs.



MEMBER (A)

GIRISH/-



MEMBER (J)